Supreme Court, U. S.
FILED
MAY 28 1975

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

NO. 74-1501

JULIAN I. RICHARDS,
Appellant,

v.

BARBARA JANE RICHARDS
ELIZABETH ANN RICHARDS
HOWARD UNIVERSITY
H.G. SMITHY COMPANY
Appellees.

AN APPEAL IN THE MATTER OF THE ESTATE OF EDITH A. PARSONS, A CONSERVATORSHIP OF PROPERTY, IN CASE NO. 7831 IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

JURISDICTIONAL STATEMENT

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CASE NO. 7831 IN THE DISTRICT OF COLUMBIA
COURT OF APPEALS

JURISDICTIONAL STATEMENT

The Appellant appeals from an order of a Three Judge Division of the District of Columbia Court of Appeals dismissing on Res Judicata grounds Appellants' appeal from

the closing order in a Conservatorship of Property wherein he sought to challenge the validity of a Judicial Sale of real property. He submits this statement to show that this court has jurisdiction of the appeal.

OPINION BELOW

The Decree rendered in the District of Columbia Court of Appeals, which appellant Julian I. Richards is appealing from is officially reported in____ Appeals D.C._____ and unofficially in 328 Atlantic Reporter, 2nd 383 and is set forth in the appendix, infra, at p. A.1.

The proceeding began on September 17, 1971 in the United States District Court for the District of Columbia where an order was entered appointing a conservator of property upon the petition of your appellant in civil action 1600-71, brought pursuant to Section 21-1501 of the District of Columbia Code. On August 1, 1972 jurisdiction of the proceeding was transferred to the Superior Court for the District of Columbia pursuant to the provisions of Section 11-921 (a) (4) (G) of the code of law for the District of Columbia as amended by Title I, Chapter I, Sub-Chapter II of Public Law 91-358, 84 Stat. 484. The proceeding retained the designation as Civil Action 1600-71 in the Superior Court and in the District of Columbia Court of Appeals it was designated case No. 7831 as adjudicated upon by the court in _____ App. D.C. _____ .

The decree being appealed from by Julian I. Richards was decided and entered on November 13, 1974 by the District of Columbia Court of Appeals; a petition for a rehearing, timely

filed, was denied by an order, entered on December 16, 1974 and the Notice of Appeal to this court was filed in the District of Columbia Court of Appeals, it being possessed of the record, on January 22, 1975.

JURISDICTION

Jurisdiction of the appeal is believed to be conferred on this court, under Article III, Section (2) of the Constitution, by reason of the authority created by Title 28 United States Code Annotated 1257 (2) wherein it is stated verbatim at page 144 that

> "Final Judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows: (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the consititution, treaties or laws of the United States, and the decision is in favor of its validity."

and by the District of Columbia Court Reform and Criminal Procedure Act of 1970, Section 142(5)(A), 84 Stat. 552 as set forth in Sections 11-101 and 11-102 of the District of Columbia code which is found on pages 795 and 796 of the 1973 Edition thereof, and they are set forth, verbatim, in the appendix, infra, pp. A.8 and A.9, as they applied throughout the entire proceeding.

The jurisdictional authority is interpreted in *Pernell v. Southall Realty*, 94 S. Ct. 1723 (1974), wherein Justice Marshall, delivering the opinion concurred in by the Chief Justice and Justice Douglas stated:

"It is, of course, a 'cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the (constitutional) question may be avoided.' *United States v. Thirty-seven Photographs*, 402 U.S. 363, 369, 91 S. Ct. 1400, 1404, 28 L.Ed. 2d 822 (1971)", . . .

"One of the primary purposes of the Court Reform Act was to restructure the District's court system to that 'the District will have a court system comparable to those of the states and other large municipalities.' H.R. Rep. No. 91-907, 91st Cong., 2d Sess., at 23 (1970)." . . .

"The 1970 Act made fundamental changes in this structure. The District of Columbia Court of Appeals was made the highest court of the District, 'similar to a state Supreme Court,' and its judgments made reviewable by this Court in the same manner that we review judgments of the highest courts of the several States. See ibid. See also *Pub.L. 91-358*, Section 111, 84 Stat. 475, codified at D.C. Code Section 11-102; Section 172(a)(1), 84 Stat. 590, amending 28 U.S.C. Section 1257. The respective jurisdiction of the newly created Superior Court for the District of Columbia and of the United States District Court for the District of Columbia Circuit were adjusted so as to 'result in a Federal-State court system in the District of Columbia analogous to court systems in the several States.' H.R. Rep. No. 91-907, supra, at 35.

"This new structure plainly contemplates that the decisions of the District of Columbia Court of Appeals on matters of local law–both common law and statutory law– will be treated by this Court in a manner similar to the way in which we treat decisions of the highest court of a State on questions of state law.", . . .

"But the new court structure certainly lends additional support to our longstanding practice of not overruling the courts of the District on local law matters 'save in exceptional situations where egregious error has been committed.' *Fisher v. United States*, supra 328 U.S., at 476, 66 S.Ct. at 1325; *Griffin v. United States*, supra, 336 U.S., at 718, 69 S.Ct. at 820. This principle, long embedded in practice and now supported by the clear intent of Congress in enacting the 1970 Court Reform Act, must serve as our guide in the present case.", . . .

CASES IN SUPPORT OF JURISDICTION

Cases the appellant believes sustain the jurisdiction conferred by statute are:

1. Pernell v. Southall Realty 94 S. Ct. 1723 (1974)
2. Fisher v. United States, 66 S. Ct. 1325
3. Griffin v. United States 69 S. Ct. 820
4. US v. Heasley 283 F2nd 422 8th Cir. 1960
5. Durley v. Mayo, 76 S. Ct. 806
6. Stembridge v. State of Georgia, 72 S. Ct. 834
7. Honeyman v. Hanan, 57 S. Ct. 350
8. Lynch v. New York, 55 S. Ct. 16
9. Cherokee Nation v. United States, 46 S. Ct. 428
10. Layton v. Missouri, 23 S. Ct. 137
11. Weiss v. Young, 64 A.2d 310
12. Borden v. Borden, 277 A.2d 89
13. Gillespie v. U.S. Steel Corporation, 85 S. Ct. 308
14. Cohen v. Beneficial Industrial Corporation, 337 US 54115.
15. Catlin v. United States, 65 S. Ct. 631
16. Brown Shoe Co. v. U.S. 82 S. Ct. 1502
17. Comm. of Internal Revenue v. Sunnen, 68 S. Ct. 715
18. Surrey Inn Inc. v. Jennings, 138 A2d 658 (Md.)

19. Smith v. Gray Concrete Pipe Co., Inc. 267 Md. 149
20. Dickinson v. Petroleum Conversion Corp. 338 U.S. 507
21. Smith v. Sherman, 349 F.2nd 547
22. Town of Clarksville, Va. v. United States, 198 F.2nd 238 (4th Cir.) 1952
23. Transportation-Communication Division v. St. Louis – San Francisco Railroad Co. 419 F2d 933 (8th Cir.) 1969
24. Karl Kiefer Mach. Co. v. U.S. Bottlers Machinery Co. 108 F.2nd 469 (7th Cir) 1939
25. Taylor v. England, 213 A.2d 821
26. National Foundry & Pipe Works Ltd. v. Oconto City Water Supply Company, 22 S.Ct. 111
27. In re Brier, 48 NJ Super. 450 137 A.2nd 617 (1958)
28. Warner v. Grayson, 24 App. DC 65 (1904)
29. Warner v. Grayson, 26 S. Ct. 240 (1906)
30. Morrison v. Burnette, 154 F. 617 (Ind. T 1907)
31. Crowley v. Crowley, 56 App. DC 340 13 F.2d 311 (1926)
32. Jones v. United States, 258 F.2d 81 (19th Cir.) 1958)
33. U.S.A. v. 58.16 Acres of Land etc. 478 F.2d 1059
34. Wolverton v. Shell Oil Co. 442 F.2d 666 9th Cir. U.S.C.A. (1971)
35. Pewabic Min. Co. v. Mason, 12 S. Ct. 887
36. Reeves v. Beardall 62 S. Ct. 1085
37. Horowitz v. Horowitz, 199 A. 816
38. Toomey v. Toomey, 80 App. DC 77
39. Citizens for a Safe Environment v. A.E.C. 489 F.2d 1018
40. Potteiger v. Fed. - Phil. Trust Co. 227 A.2d 864 (Pa)
41. Brewster v. Gage 50 S.Ct. 115
42. McFeeley v. Comm. of Internal Revenue, 56 S. Ct. 54
43. U.S. v. Jones, 35 S. Ct. 261
44. Logan v. Davis, 34 S. Ct. 685
45. Maryland Casualty Co. 40 S. Ct. 155

46. Swendig v. Washington Co. 44 S.Ct. 496
47. G. & C Merriam Co. v. Saalfield, 36 S. Ct. 477
48. McDonnel v. U.S. 455 F.2nd 91 (8th Cir.) 1972
49. Premier Electrical Construction Co. v. Miller-Davis Co. 422 F.2d 1132 (7th Cir) 1970
50. Overseas Motors Inc. v. Imports Motors Ltd. Inc. 375 Fed. Supp. 499
51. Lawlor v. National Screen Service Corp. 75 S. Ct. 865
52. Cromwell v. County of Sac 24 L.Ed. 195 (1877)
53. U.S. ex rel and for use of T.V.A. v. Powelson 63 S.Ct. 1047
54. U.S. v. Petty Motor Co. 66 S.Ct. 596
55. U.S. v. Causby, 66 S.Ct. 1062
56. Smith v. U.S. 369 F.2d 49 (8th Cir.) 1966
57. U.S. ex rel Konigsberg v. McFarland, 348 F.2d 215 (3rd Cir.) 1965
58. Lavasek v. White, 339 F.2d 861 (10th Cir.) 1965
59. Hovey v. Elliott, 17 S. Ct. 841
60. Berry v. Allen, 411 F.2d 1142 (6th Cir.) 1969
61. Rheinberger v. Security Life Ins. Co. 146 F.2d 680 (7th Cir.) 1944)
62. Smith v. Alleghany Corp. 394 F.2d 381 (2nd Cir.) 1968 Cert. denied 89 S.Ct. 300
63. Peterson v. Clark Leasing Corp. 451 F.2d 1291 (9th Cir) 1971
64. Embrey v. Equitable Life Assurance Society, 451 F.2d 472 (10th Cir) 1971
65. Shenandoah Corp. v. E. Franklin Jackson, 298 F.2d 324 Cert. Denied 82 S. Ct. 1255 (1962)
66. United States ex rel. Hine v. Morse, 54 L.Ed. 1123 (1911)
67. Goldsmith v. Valentine, 35 App. DC 299 (1910)

68. Maloney v. Spencer, 170 Fed.231
69. In re Searle 118 Fed. Supp. 273
70. Cropley v. Cooper 19 Wall (US) 167 22 L.Ed. 109
71. Shaffner v. Briggs, 36 Md. 55
72. Newcomer v. Orem, 2 Md. 297
73. Nebbia v. New York 291 U.S. 502 78 L.Ed. 940
74. Twinning v. New Jersey, 211 US 78 56 L.Ed. 97
75. Yu Cong Eng v. Trinidad, 271 US 500 70 L.Ed. 1059
76. Stansbury v. Inglehard 9 Mackey, 134 (1891) appeal dismissed in 38 L.Ed. 76
77. Ballard v. Peyser, 67 App. D.C. 169 90 F.2d 414 (1937)
78. DeMarco v. Kertz, 80 App. D.C. 204 151 F.2d 305 (1945)
79. Williamson et al v. Berry, 8 Howard 495 12 L.Ed. 1170
80. Gray v. Brignardello et al 1 Wall. 627 (1864)
81. Gibson v. Lyon, 115 US 439 29 L.Ed. 440 6 S.Ct. 129 (1885)
82. Camden v. Mayhew, 129 US 73 32 L.Ed. 608 (1889)
83. Cox v. Hart, 145 US 376 36 L.Ed. 741 (1892)
84. Hansberry et al v. Lee 61 S. Ct. 115 (1940)
85. Wadsworth v. Wadsworth, 260 N.C. 702 133 S.E.2d 681
86. Lane Industries v. United States, 162 F. Supp. 413 1st Cir. C.A. (1966)
87. United States v. Branch Coal Corporation, 390 F.2d 73rd Cir. U.S.C.A. (1968)
88. Webster v. Barnes Banking co. et al 113 F.2d 1003 10th Cir. U.S.C.A. (1940)
89. Pearson v. Gillenwaters et al 42 S.W. 9 Supreme Court of Tennessee (1897)
90. Ball v. Safe Deposit & Trust Co. 92 Md. 503 48 A. 155
91. Yazoo M.V.R. Co. v. City of Clarksdale 257 U.S. 10 42 S.Ct. 27, 66 L.Ed. 104 (1921)
92. In re Jewett & Sowers Oil Co. 7 Cir. 86 F.2d 497 (1936)

93. Slocum v. Edwards, 168 F.2d 627 (2nd Cir.)1948
94. G.A.C. Comm. Corp. v. Aurora Trucking Co., Inc., 404 F.2d 761 (6th Cir) 1968
95. State of California v. U.S.A. 395 F.2d 261

STATE STATUTES

The validity of the following "State" statutes of the District of Columbia is involved, and their pertinent texts are set forth in the appendices hereto, verbatim, as they appear in the official 1973 Edition of the District of Columbia code which is the same as they read during the entire time span of their applicability to the subject proceeding: (Page reference is to D.C. Code 1973 Ed.)

Section 21-143. Duties; accounts; maintenance and education; sales; compensation. P 1279 (Appendix infra p. A.9)

Section 21-146. Contract for sale by adult in behalf of himself and infant. P 1279-80 (Appendix infra p. A.9)

Section 21-147. Sale of infants principal for maintenance or education. P 1280 (Appendix infra p. A.10)

Section 21-148. Sale or exchange of real estate; proceedings. P 1280 (Appendix infra p. A.10)

Section 21-149. Parties. P 1280 (Appendix infra p. A.11)

Section 21-150. Proof. P 1280 (Appendix infra p. A.11)

Section 21-151. Decree of sale; costs. P 1280-81 (Appendix infra p. A.11)

Section 21-154. Ratification of sales by court. P 1281 (Appendix infra p.A.11)

Section 21-1501. Appointment of Conservators. P 1327 (Appendix infra p.A.12)

Section 21-1502. Filing of Petition, etc. P. 1328 (Appendix infra p. A.12)

Section 21-1503. Bond; powers and duties. P 1328 (Appendix infra p. A. 13)

Section 21-1506. Personal welfare of person under conservatorship. P 1330 (Appendix infra p. A.13)

Section 11-721(a). Orders and judgments of the Superior Court. P809 (Appendix infra p. A.14)

Section 2001-Vol. 28 U.S.C.A. Sale of Realty Generally. P 23 (Appendix infra p. A.14)

QUESTIONS PRESENTED

This appeal presents the following questions:

1. What property of the appellant with the meaning of the 5th Amendment to the Constitution of the United States was involved in CA 1600-71?

2. Was heir at law Julian I. Richards, who was also Executor-designate in the will of the ward whose real property was the subject of the judicial sale the legality of which it is sought to have reviewed, denied his constitutional

rights to due process of law as a result of the Decision of the District of Columbia Court of Appeals in Case No. 7831, rendered on November 13, 1974, in an appeal from an order of the Superior Court of the District of Columbia's probate division, in a conservatorship of property proceeding, No. CA1600-71, approving the final account of the conservator therein?

3. Can a trial court's jurisdiction and authority to enter a judicial sale order in a conservatorship of property proceeding be challenged in an appeal from the final closing order in that proceeding when earlier orders therein authorizing and confirming the sale were the subject of earlier appeals which were dismissed by the appeals court for lack of prosecution by an order granting an intervenor's unopposed motion to dismiss which came at a point in time in the proceeding where the status of the interested parties had been changed by the death of the ward and the administration of her estate, as a decedents estate, had begun in the domiciliary jurisdiction (Maryland) as well as in the District of Columbia and the State of Virginia?

4. Was the order of the Superior Court entered on October 20, 1972 appealable?

5. If the Superior Court order entered on October 20, 1972 is an appealable order, what effect did the continued administration of the conservatorship during the pendency of the appeal have on the appellant's constitutional rights?

7. Was there ever a time in CA 1600-71, up to and including the closing of case No. 7831 by the Appeals courts' issuance of its mandate on its final decree, that controversy between the parties was ended with regard to the judicial sale?

8. Should the doctrine of Res Judicata have been invoked by the District of Columbia Court of Appeals to operate as a bar to further litigation of appellant's objection to the Judicial Sale?

9. Did the Superior Court have competent jurisdiction in CA 1600-71 to authorize the conservator to enter into a contract to sell the ward's real estate?

10. Were appellant's constitutional rights denied to him in the conservatorship of property proceeding being appealed from?

11. What was the affect of the appellant's appeal from the order confirming the judicial sale on the validity of the lower court action taken during its pendency?

12. Should the presence of personalty adequate to meet the needs of the present and immediate future in an estate conservatorship affect the fiduciary's choice in deciding whether or not to petition the court for authority to sell real estate?

13. Was conservatorship CA 1600-71 administered such that the conservator should have been paid the compensation he received by the ancillary administrator c.t.a. d.b.n. of the decedent's estate?

14. Does the probate division of the Superior Court for the District of Columbia possess general and plenary equitable power?

15. Did the Superior Court and/or the Court of Appeals commit egregious error in the proceedings under review?

STATEMENT OF THE CASE

Appellant requests to have incorporated by reference the "Statement of the Case" in his two briefs in Case No. 7831 District of Columbia Court of Appeals.

Assuming the actions of all the participants in CA1600-71, a conservatorship of property proceeding, to have been honorably motivated throughout, appellant was nevertheless aggrieved throughout that proceeding because the creating petition, from his standpoint as initiator thereof, as closest male relative of the ward, as Executor-designate in the ward's will, and as one of three residuary legatees of the ward's will in a position to receive, by devise, a one-sixth interest in an apartment house valued at $400,00.00, began what resulted in a burdensome, inefficient and unjustifiably costly proceeding, violative of his constitutional rights to due process, deceptively misleading to the other residuary legatees, and, as usurpation of his status as Executor-designate, and as Executor, of the will of his aunt, Edith A. Parsons, and a subversion of the orderly administration of her estate.

Having sought appointment as conservator himself, appellant was determined not to hamper the efforts of the court's appointee and within several days of his appointment notified him of his willingness and ability to assist him. The thanks he received for his abstinence in attempting to be cooperative was to be surprised by receipt of certified mail of a copy of conservator's petition for authority to sell real estate, which already had been filed at court. Upon receipt thereof appellant called the conservator's office and was informed by his secretary that the "consents" of his sisters were also on file at court, which was also a surprise.

Appellant filed an appeal from the order of the Superior Court entered on October 20, 1972 overruling his objection to conservator's petition for authority to sell the real estate, which order was held to be not appealable by both the Superior Court and the District of Columbia Court of Appeals because of its interlocutory veneer, notwithstanding that the negotiation it authorized had already taken place without notice to appellant, giving it a practical finality such that appellant felt compelled to appeal from it in self defense, having had it appear to him as appealable simply from a reading of the ambiguous statute being drawn in question as repugnant to appellant's constitutional rights, namely section 11-721 of the District of Columbia code, 1973 official edition, applicable at the time the appeal was perfected.

The conservator and court in instituting the judicial sale were apparently seeking to act both pursuant to Title 28 U.S.C.A. 2001 and Title 21-1503 of the District of Columbia code, 1973 official edition, and, perhaps, pursuant to Title 21-143 and its companion delimiting sections. Appellant is not able to harmonize and reasonably interpret this maize of authority the record indicates was invoked in CA1600-71 to justify a private judicial sale within the framework of a conservatorship of property proceeding and it is at the point in time when the conservator petitioned the Superior Court for authority to sell the real estate that appellant contends the unconstitutionality of the statutes was raised, by the pleadings, affecting the competency of the Superior Court's jurisdiction to authorize such a sale in such a proceeding and giving rise to the substantial federal question of whether or not lack of due process had been allowed into the conservatorship of property proceeding leading to the eventual deprivation of appellant's property rights, *when*, in case No.

7831, the District of Columbia Court of Appeals invoked the doctrine of Res Judicata and decided that a confirmation of the judicial sale had taken place by the retroactive effect of its rulings which noted but ignored the devolution of the title to the real estate brought about by the ward's death and the effect of the commencement of the three administrations of the ward's estate as a decedent's estate while case no. 7831 was being considered by the appeals court.

CONCLUSION

Egregious error was committed by both of the lower courts within the meaning of the case of *Pernell v. Southall Realty* (94 S. Ct. 1723) and the questions presented are so substantial, because they involve those constitutional rights of the appellant cherished as priceless enough to be defended in war by our Nation and by its founders before it, that they require plenary consideration, with briefs on the merits and oral argument, for their resolution.

For the reasons set forth above, jurisdiction should be noted.

Respectfully submitted,

ROY D. CROMWELL
Attorney for Appellant.

JULIAN I. RICHARDS
Appellant.

Attorneys of Record.

APPENDIX

DISTRICT OF COLUMBIA
COURT OF APPEALS

NO. 7831

In re: EDITH A. PARSONS, A Conservatorship

JULIAN I. RICHARDS, Appellant.

Appeal from the Superior Court of the
District of Columbia

(Submitted June 13, 1974 Decided November 13, 1974)

Julian I. Richards, pro se, was on the brief for appellant.

John L. Hamilton entered an appearance as ancillary administrator of the estate of Edith A. Parsons.

David B. Nicholson entered an appearance on behalf of Elizabeth A. Richards and Barbara J. Richards, ancillary executrices of the estate of Edith A. Parsons.

OPINION BELOW

Before Nebeker, Yeagley and Harris, Associate Judges.

NEBEKER, *Associate Judge:* This appeal brought by Julian I. Richards is the third in a spate of appeals challenging various steps leading to the sale of real property during the administration of a conservatorship of his aunt's estate. After review of the record, we dismiss the appeal on res judicata grounds.

In August, 1971, Richards petitioned the United States District Court to be appointed conservator of the estate of his aunt, Edith A. Parsons.[1] In September, 1971, the court appointed another individual to be conservator.

The estate included a one-half interest in an apartment house valued in excess of $190,000. The proposed sale of that property precipitated the instant case as well as two previous appeals. During the summer of 1972, the conservator was informed by the trustee of an estate holding the other one-half interest in the apartment house that he intended to sell the trust interest and that if necessary he would seek partition. The conservator entered into negotiations for the sale of the property rather than have a judicial partition of it. The conservator sought consent for the sale from Richards and his two sisters. Only Richards objected. The trial court held a hearing on October 20, 1972, to air Richards' objections which included, along with certain irrelevancies, concern over the loss of rental income. The trial court, perceiving the issue to be what would be in the best interest of the ward and the ward's estate, found

> that it is in the best interest of the estate of the ward, and of the ward individually, that the conservator be permitted to proceed to the private sale of the real estate in question . . . .

The court then ordered the conservator to proceed with a private sale of the one-half interest.

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[1] Jurisdiction over this action was subsequently transferred to the Superior Court pursuant to the District of Columia Court Reform and Criminal Procedure Act of 1970, Pub. L. No. 91-358, 84 Stat. 473 (July 29, 1970).

Richards noted an appeal from that order (No. 7128). The trial judge sought memoranda respecting the appealability of the order, no doubt questioning the trial court's continued jurisdiction if this court had acquired jurisdiction. Only the conservator responded, contending that the order was not final and therefore not appealable, with which the trial court agreed. We also think that the order was not appealable since it was not final, but simply an order authorizing negotiations for a private sale. Judicial control remained to determine regularity of the anticipated sale and confirmation of the sale when a buyer could be found. Cf. Catlin v. United States, 324 U.S. 229 (1945).

On December 15, 1972, another hearing was held, this time relating to an order nisi. *See* Super. Ct. Civ. R. 308(c). Richards again made general objections to the sale decision. The judge, again concluding that a private sale was preferable, signed the order nisi.

On January 12, 1973, a hearing was held, and at its conclusion a sale to Howard University was confirmed by the court. Richards noted an appeal that day (No. 7225). Subsequently, this court consolidated that appeal with appeal No. 7128, noted from the order of the October 20, 1972, hearing. After consolidation, Richards made repeated requests for extensions of time for filing a brief. Finally, on October 4, 1973, this court, acting upon an unopposed motion by intervenor Howard University, dismissed those appeals for lack of prosecution.

Edith Parsons died on February 19, 1973, and Richards became the executor of the estate. We note that her death occurred prior to completion of the sale and that the conservator's Second and Final Account, as does the report of the Auditor-Master, lists the property in question as part of the estate subject to probate.

The present appeal, filed on August 14, 1973, was taken after Richards received a copy of an order ratifying the Auditor-Master's report and directing the conservator to file a verified Statement of Distribution and Settlement of the Conservatorship. Richards does not here challenge the report or statement but rather hearkens back to the contention that the notice of appeal in No. 7128 divested the trial court of jurisdiction to effectuate the subsequent sale confirmation.

Our first concern is whether the dismissal of the appeal in No. 7225, thus making final the confirmation order, precludes further litigation on the issue appellant is presently raising. Authority for a conservator to sell real property is contained in Superior Court Civil Rule 308. Most notably the rule states that, unless otherwise provided, sale of real property is to be governed by 28 U.S.C. §2001 (Sale of Realty Generally). Both §2001 and Superior Court Civil Rule 308 reveal that the final judicial step leading to a private sale is court approval through confirmation. Subsequent to that confirmation the parties are committed to complete the transaction. *See Morrison v. Burnette*, 154 F. 617 (Ind. T. 1907); *cf. Crowley v. Crowley,s, 56 App.D.C. 340, 13 F.2d 311 (1926); Jones v. United States*, 258 F.2d 81 (10th Cir. 1958). Conversely, such liability is not created until confirmation takes place. *See In re Beier*, 48 N.J.Super. 450, 137 A.2d 617 (1958).

We conclude that the court's confirmation of the order was final. *See In re Hardison's Guardianship*, 28 Wash. 921, 183 P.2d 840 (1947); *cf. Everett v. Forst*, 269 F. 867 (D.C.Cir. 1921). Our prior order of dismissal made final the order of confirmation, and Richards is barred by the doctrine of res judicata from further litigating his objection to that sale. *See Taylor v. England*, D.C.App., 213 A.2d 821 (1965); *Warner v. Grayson*, 24 App.D.C. 55 (1904); *United States v. Heasley*, 283 F.2d 422 (8th Cir. 1960). Accordingly, this appeal is dismissed.

So ordered.

ORDER DENYING REHEARING PETITION
DISTRICT OF COLUMBIA
COURT OF APPEALS
Filed December 16, 1974

NO. 7831 JANUARY TERM, 1974

IN RE:

EDITH A. PARSONS.
A Conservatorship

JULIAN I. RICHARDS,
Appellant.

CA 1600 – 71

BEFORE: Nebeker, Yeagley and Harris, Associate Judges.

ORDER

On consideration of appellant's "Petition for Rehearing", it is

ORDERED that appellant's aforesaid petition is denied.
PER CURIAM.

Copies to:

Hon. Margaret A. Haywood, Judge
Superior Court of District of Columbia

Clerk, Superior Court of District of Columbia

Julian I. Richards, Pro se
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DISTRICT OF COLUMBIA
COURT OF APPEALS
Filed January 22, 1975

NO. 7831 January Term 1975

In Re:

Edith A. Parson,
A Conservatorship

Julian I. Richards,
Appellant.

CA1600-71

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given to the court possessed of the record that Julian I. Richards, the Appellant above named hereby appeals to the Supreme Court of the United States from the final judgment of the District of Columbia Court of Appeals in Case No. 7831, entered in this action on November 13, 1974, the mandate on which was issued to the Superior Court of the District of Columbia on December 24, 1974.

This appeal is taken pursuant to Title 28 United States Code 1257(2) providing that:

> Final Judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows: (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity.

And, pursuant to Title 11-101 of the District of Columbia Code, 1967 Edition, Supplement V (1972); and, by reason of the statutes, contained in Title 11 and Title 21 of the District of Columbia Code, 1967 Edition, Supplements IV and V, and the 1973 edition, in force and effect during the proceeding known as CA1600-71, as designated by the Superior Court of the District of Columbia, as they pertain to a conservatorship of property proceeding.

Experiencing difficulty obtaining counsel to represent him in this matter, in part due to his financial condition, but with the determined intention so to do, the appellant hereby seeks to reserve unto himself without prejudice, his privilege to petition to the Supreme Court for a review on writ of certiorari all of the matters regarding the estate of Edith A. Parsons now pending, or a matter of record, in the District of Columbia Court of Appeals; the Superior Court of the District of Columbia; the Circuit Court of Virginia Beach, State of Virginia; the Circuit Court of Montgomery County, State of Maryland; the Special Court of Appeals, State of Maryland and/or the Court of Appeals, State of Maryland.

Certificate of Service

I hereby certify that a copy of the foregoing notice will be mailed, certified mail, showing address where delivered on the requested return receipt pursuant to Rules 10 and 33 of the Supreme Court of the United States, by depositing the notice in a United States post office, with first class postage prepaid, addressed to counsel of record at their post office addresses, and, addressed to all parties required to be served, in the same manner and evidenced by the same proof, id est, signed certified mail receipt.

/s/ Julian I. Richards.

STATUTES (STATE)

OFFICIAL 1973 EDITION
DISTRICT OF COLUMBIA CODE

In Part II (Judiciary and Judicial Procedure), Title II (Organization and Jurisdiction of the Courts), Chapter I (General Provisions) the code reads verbatim in Section 11-101 (Judicial Power) as follows:

> The Judicial power in the District of Columbia is vested in the following courts:
>
> (1) The following Federal Courts established pursuant to Article III of the Constitution:
>
> (A) The Supreme Court of the United States.
>
> (B) The United States Court of Appeals for the District of Columbia circuit.
>
> (C) The United States District Court for the District of Columbia.
>
> (2) The following District of Columbia courts established pursuant to Article I of this Constitution:
>
> (A) The District of Columbia Court of Appeals.
>
> (B) The Superior Court of the District of Columbia. (July 29, 1970, Pub.L. 91-358 Section III, Title I, 84 Stat. 475).

In Part II (Judiciary and Judicial Procedures), Title II (Organization and Jurisdiction of the Courts), Chapter I (General Provisions) the code reads verbatim in Section 11-102 (Status of District of Columbia Court of Appeals) as follows:

> The highest court of the District of Columbia is the District of Columbia Court of Appeals. Final judgments and decrees of the District of Columbia Court of Appeals are reviewable by the Supreme Court of the United States in accordance with Section 1257 of Title 28, United States Code. (July 29, 1970, Pub.L. 91-358, Section III, Title I 84 Stat. 475).

Section 21-143. Duties; accounts; maintenance and education; sales; compensation

A guardian shall manage the estate for the best interests of the ward, and once in each year, or oftener if required, he shall settle an account of his trust under oath. He shall acount for all profit and increase of his ward's estate and the annual value thereof, and shall be allowed credit for taxes, repairs, improvements, expenses, and commissions, and he is not answerable for any loss or decrease sustained without his fault. The court shall determine the amounts to be expended anually in the maintenance and education of the infant, regard being had to his future condition and prospects in life; and if it deems it advantageous to the ward, may allow the guardian to exceed the income of the estate and to make use of the principal and sell it or part thereof, under the court's order, as provided by this subchapter; but a guardian may not sell any property of his ward without an order of the court previously had therefor. The court shall allow a reasonable compensation for services rendered by the guardian not exceeding a commission of five per centum of the amounts collected, if and when disbursed. (Sept. 14, 1965, 79 Stat. 741, Pub.L. 89-183, Section 1, eff. Jan 1, 1966.)

Section 21-146. Contract for sale by adult in behalf of himself and infant

When a constract is made for the sale of real estate by persons interested therein jointly or in common with an

infant, for and in behalf of all the persons so interested, which the court, upon a hearing and examination of the circumstances, considers to be for the interest and advantage both of the infant and of the other persons interested therein to be confirmed, the court may confirm the contract and order a deed to be executed according to it. Sales and deeds made in pursuance of the order are sufficient in law to transfer the estate and interest of the infant in the real estate. (Sept. 14, 1965, 79 Stat. 742, Pub.L. 89-183, Section 1, eff. Jan. 1, 1966.)

Section 21-147. Sale of infant's principal for maintenance or education.

When it appears, upon the verified petition of a guardian, or in a case of his refusal to act, a next friend of an infant, and the appearance and answer of the infant by guardian to be appointed by the court, and proof by deposition of one or more disinterested witnesses, that a sale of the principal of the infant's estate, or of a part thereof, whether real or personal, is necessary for his maintenance or education, regard being had to his condition and prospects in life, the Probate Court may decree the sale on terms which to it seem proper. (Sept. 14, 1965, 79 Stat, 742, Pub.L. 89-183, Section 1, eff. Jan. 1, 1966.)

Section 21-148. Sale or exchange of real estate; proceedings

When a guardian or, in case of his refusal to act, a next friend, deems that the interests of the ward will be promoted by a sale of his freehold or leasehold estate in lands, for the purpose of reinvesting the proceeds in other property or securities, or by an exchange of the property for other property, he may file a verified petition in the court, setting forth all the estate of the ward, real and personal, and all the facts which, in his opinion, tend to show whether the ward's interest will be promoted by the sale or exchange. (Sept. 14, 1965, 79 Stat. 742, Pub.L. 89-183, Section 1, eff. Jan. 1, 1966.)

Section 21-149. Parties

The infant, together with those who would succeed to the estate if he were dead, shall be made parties defendant in the proceeding provided by section 21-148; and court shall appoint a fit and disinterested person to be guardian ad litem for the infant also, if above the age of 14 years, shall answer the petition in proper person, under oath. (Sept. 14, 1965, 79 Stat. 742, Pub.L. 89-183, Section 1, eff. Jan. 1, 1966.)

Section 21-150. Proof

Every fact material to determine the propriety of a sale or exchange shall be clearly proved, in a proceeding brought pursuant to section 21-148, by disinterested witnesses, whose testimony shall be taken in writing in the presence of the guardian ad litem or upon interrogatories agreed upon by him. (Sept. 14, 1965, 79 Stat. 743, Pub.L. 89-183, Section 1, eff. Jan. 1, 1966.)

Section 21-151. Decree of sale; costs

When, in a proceeding brought pursuant to section 21-148, the court is satisified from the evidence that the interests of the infant require a sale or exchange, as prayed, and the rights of others will not be violated thereby, the sale or exchange may be decreed, and the costs of the suit shall be paid out of the infant's estate; otherwise they shall be paid by the complainant. (Sept. 14, 1965, 79 Stat. 743, Pub.L. 89-183, Section 1, eff. Jan. 1, 1966.)

Section 21-154. Ratification of sales by court

A sale of property of an infant is not effectual to pass title to the property sold until it is reported to and ratified by the court. (Sept. 14, 1965, 79 Stat. 743, Pub.L. 89-183, Section 1, eff. Jan. 1, 1966.)

Section 21-1501. Appointment of conservators

When an adult residing in or having property in the District of Columbia is unable, by reason of advanced age, mental weakness not amounting to unsoundness of mind, mental illness, as the latter term is defined by section 21-501, or physical incapacity, properly to care for his property, the Superior Court of the District of Columbia may, upon his petition or the sworn petition of one or more of his relatives or any other person or persons, appoint a fit person to be conservator of his property. (Sept. 14, 1965, 79 Stat. 774, Pub.L. 89-183, Section 1, eff. Jan. 1, 1966; July 29, 1970, Pub.L. 91-358, title I, Section 150(i)(1), 84 Stat. 569.)

Section 21-1502. Filing of petition; requirements; time and place of hearing; appointment of guardian and litem

(a) Pursuant to the filing of the petition under section 21-1501, the court shall fix a time and place for a hearing; and shall cause at least 14 days' notice thereof to be given to the person for whom a conservator is sought to be appointed, if he is not the petitioner, and to such other persons as the court directs. The petition shall include, among other things–

(1) the reasons for the appointment of a conservator;

(2) the name and address of the person for whom the conservator is sought;

(3) the date and place of his birth, if known; and

(4) the names and addresses of the nearest known heirs at law, or the next of kin, if any.

(b) The court may appoint a disinterested person to act as guardian ad litem in a proceeding under this section. Upon a finding that the person for whom the conservator is sought

is incapable of caring for his property, the court shall appoint a conservator who shall have the charge and management of the property of the person subject to the direction of the court. (Sept. 14, 1965, 79 Stat. 774, Pub.L. 89-183, Section 1, eff. Jan. 1, 1966.)

Section 21-1503. Bond; powers and duties

The conservator before entering upon the discharge of his duties shall execute an undertaking with surety to be approved by the court in such amount as the court orders, conditioned on the faithful performance of his duties as conservator. He shall have control of the estate, real and personal, of the person for whom he has been appointed conservator, with power to collect all debts due the person, and upon authority of the court to adjust and settle all accounts owing by him, and to sue and be sued in his representative capacity. He shall apply such part of the annual income and of the principal of the estate as the court authorizes to the support of the person and the maintenance and education of his family and children; and shall in all other respects perform the same duties and have the same rights and powers with respect to the property of the person as have guardians of the estates of infants. (Sept. 14, 1965, 79 Stat. 775, Pub.L. 89-183, Section 1, eff. Jan. 1, 1966.)

Section 21-1506. Personal welfare of person under conservatorship

The court may at any time order that the conservator or other person shall be responsible for the personal welfare of the person whose property is under conservatorship. In that event the conservator or other person, subject to the direction and control of the court, has the same powers and duties with respect to the personal welfare of the person whose property is under conservatorship as have the guardians of the persons or infants under guardianships. (Sept. 14, 1965, 79 Stat. 775, Pub.L. 89-183, Section 1, eff. Jan 1, 1966; July 29, 1970, Pub.L. 91-358, title I, Section 150(i)(2), 84 Stat. 569.)

Section 11-721. Orders and judgments of the Superior Court

(a) The District of Columbia Court of Appeals has jurisdiction of appeals from–

(1) all final orders and judgments of the Superior Court of the District of Columbia;

(2) interlocutory orders of the Superior Court of the District of Columbia–

(A) granting, continuing, modifying, refusing, or dissolving or refusing to dissolve or modify injunctions;

(B) appointing receivers, guardians, or conservators or refusing to wind up receiverships, guardianships, or the administration of conservators or to take steps to accomplish the purpose thereof; or

(C) changing or affecting the possession of property; and

(3) orders or rulings of the Superior Court of the District of Columbia appealed by the United States or the District of Columbia pursuant to section 23-104 or 23-111 (d)(2).

Section 2001(b).Vol. 28. Sale of realty generally

(b) After a hearing, of which notice to all interested partiesshall be given by publication or otherwise as the court directs, the court may order the sale of such reality or interest or any part thereof at private sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private

sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.